



Crl.R.C.(MD)No.788 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2023

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

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1.Rajan @ Raja Clement Packiayanathan

2.Raji

3.Stephen

... Petitioners

Vs.

State Rep by
The Inspector of Police,
Sivanthipatti Police Station,
Tirunelveli District.
(Cr.No.117 of 2012)

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records in judgment passed in S.C.No.36 of 2014 dated 30.10.2015 by the learned Assistant Sessions Judge, Tirunelveli and which was modified by the III Additional Sessions Judge, Tirunelveli in C.A.No.125 of 2015 dated 18.09.2017. Revise the same.



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For Petitioners : Mr.K.Navaneetha Raja
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed to set aside the judgment passed in S.C.No.36 of 2014 dated 30.10.2015 by the learned Assistant Sessions Judge, Tirunelveli and which was modified by the III Additional Sessions Judge, Tirunelveli in C.A.No.125 of 2015 dated 18.09.2017.

2.The case of the prosecution is that on 19.08.2012, due to previous enmity, at about 11.00 pm, the accused persons set ablaze on the thatched shed in front of the one of the witness's house and also burned the entire car bearing Reg.No.TN02R1202 owned by the defacto complainant. Thereby, the accused caused loss to the defacto complainant to the tune of Rs.1,25,000/-.

3.On the complaint, the respondent police registered FIR in Cr.No. 117 of 2012 for the offence punishable under Section 435 IPC and



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Section 4 of Tamilnadu Property (Prevention of damage and loss)Act, 1992 r/w Section 34 IPC. After completion of investigation, the respondent police filed the final report and the same was taken cognizance in S.C.No.36 of 2014 by the learned Assistant Sessions Judge, Tirunelveli.

4.On the side of the prosecution, P.W.1 to P.W.8 were examined and marked Ex.P.1 to Ex.P.6. The prosecution also produced material objects 1 and 2. On the side of the accused, no one was examined and no document was marked. On perusal of oral and documentary evidence, the trial Court found the accused persons guilty for the offence punishable under Section 4 of TNPPDL Act and they were sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.2,000/- i/d three months rigorous imprisonment for the offence punishable under Section 4 of TNPPDL Act. Aggrieved by the same, the accused persons preferred an appeal and the same was partly allowed the appeal and thereby, confirmed the conviction and reduced the sentence alone from three years to two years. Hence, the present revision.



5.The learned counsel appearing for the petitioner would submit that there were discrepancies between the evidence of P.W.1 to P.W.3. P.W.2 and P.W.3 are close relatives of P.W.1 and hence, they deposed in support of P.W.1. In fact, P.W.3 was aged about 13 years at the time of the occurrence and he was tutored to depose before the trial Court. One of the eye witnesses was examined as as P.W.2 and he is also close relative of P.W.1. He could not also seen the occurrence, though it was happened in front of his house. In fact, after seeing the fire, immediately, he called respondent police over phone. However, no FIR has been registered. After complaint lodged by the complainant, FIR has been registered. Therefore, the prosecution failed to prove its case beyond any doubt.

6.The learned counsel appearing for the petitioner would further submit that the Investigating Officer's daughter is married to the son of P.W.1 and hence, a false case has been foisted as against the petitioners. Without any evidence, both the Courts below convicted the petitioners. No independent witness was examined and all the witnesses are close relatives of P.W.1. Therefore, he prayed for acquittal of the accused persons.



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7.Per contra, the learned Government Advocate(Crl.side) appearing for the respondent police would submit that P.W.2 and P.W.3 are eye witnesses to the occurrence. They categorically deposed that the petitioners set fire on the thatched shed, under which, the car was parked by P.W.1. Immediately, P.W.2, called fire services and all the general public attempted to stop the fire. However, entire thatched shed and car were completely burned. Therefore, P.W.1 had lost his car and thatched shed to the tune of Rs.1,25,000/-. Therefore, the prosecution proves its case beyond any doubt and the Courts below rightly convicted the petitioners and it does not warrant any interference by this Court. Hence, he prayed for dismissal of this revision case.

8.Heard both sides and perused the materials available in the record.

9.It is seen that due to previous enmity, the petitioners set ablaze thatched shed and car, which was parked under thatched shed, belonged to P.W.1. On 19.08.2012, at about 11.00 pm, all the three petitioners went



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to the scene of crime and set fire on thatched shed and car, which was parked under thatched shed. Though P.W.1 was not eye witness, he deposed that the car and thatched shed were owned by him. He further deposed that on 19.08.2012, at about 06.00 pm., when son of P.W.1 was proceeded to his house by car, near Srimankulam, the petitioners parked their bike on the road and they were sitting in a bridge. When the son of P.W.1 asked them to move their vehicles, the petitioners entered into a wordy quarrel with him. After reaching his home, he parked the car under thatched shed. On the same day, at about 11.00 pm., he heard the sound out side of his house and came out from his house and he was informed that the petitioners herein had set ablaze on thatched shed and also the car. Therefore, all the general public attempted to stop the fire and immediately informed the fire services and they came and stop the fire. However, the entire thatched shed and car were burned out and on the same day early morning at about 02.00 am., he lodged complaint before the respondent police.

10.On perusal of evidence of P.W.2 & P.W.3 revealed that the accused persons had set fire on the thatched shed and car at about



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11.00pm., on 19.08.2012. Immediately, all the general public attempted to stop the fire, but failed. Thereafter, fire service persons came and stopped the fire. Thereby, the prosecution categorically proved its case beyond any doubt. Hence, both the Courts below rightly convicted the petitioners for the offence punishable under Section 4 of TNPPDL Act. At the time of suspending the sentence, this Court directed the petitioners to deposit Rs.20,000/- each. The said condition was duly complied with.

11.The learned counsel appearing for the petitioners would submit that the petitioners are ready and willing to deposit the remaining amount to the loss caused to the defacto complainant.

12.Considering the above facts and circumstances of the case, this Court is inclined to modify the sentence alone. Accordingly, the conviction is hereby confirmed as against the petitioners. Insofar as the sentence is concerned, the same is reduced from two years to the period already undergone by the petitioners, on condition that the petitioners shall deposit Rs.25,000/- each to the credit of S.C.No.36 of 2014 before the learned Assistant Sessions Judge, Tirunelveli, on or before



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02.05.2023. On such deposit, P.W.1 is permitted to withdraw the entire amount including the amount already deposited by the petitioners while suspending the sentence, by way of filing proper application. If the petitioners failed to deposit the said amount within the stipulated time, the sentence imposed on the petitioners will be restored, without any further reference to this Court and the respondent police is at liberty to secure the petitioners to serve the remaining period of sentence.

13.In the result, this criminal revision case is partly-allowed.

21.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To
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- 1.The Assistant Sessions Judge,
Tirunelveli
- 2,III Additional Sessions Judge,
Tirunelveli
- 3.The Inspector of Police,
Sivanthipatti Police Station,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN,J.

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